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H.B. No. 2684

A BILL TO BE ENTITLED

AN ACT

relating to the foreclosure process; creating an offense; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Property Code, is amended by adding Subtitle A-1 to read as follows:

SUBTITLE A-1. CONSUMER PROTECTIONS

CHAPTER 50. FORECLOSURE PROTECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 50.001. SHORT TITLE. This chapter may be cited as the "Foreclosure Protection Act."

Sec. 50.002. DEFINITIONS. (a) In this chapter:

(1) "Equity purchase contract" means a contract between an equity purchaser and the homeowner of a residence in foreclosure.

(2) "Equity purchaser" means a person who acquires title to a residence in foreclosure. The term does not include a person who acquires the title:

(A) for purposes of using the property as the person's residence for at least one year;

(B) by a deed in lieu of foreclosure to the holder of a voluntary lien or encumbrance of record;

(C) by a deed from the officer charged with selling property under Chapter 34, Tax Code;

1 (D) at a sale of real property authorized by
2 statute;

3 (E) by court order or judgment;

4 (F) from the person's spouse or a relative of the
5 person related by consanguinity or affinity;

6 (G) while performing services as a part of a
7 person's normal business activities under the laws of this state or
8 the United States that regulate banks, trust companies, savings and
9 loan associations, credit unions, or insurance companies;

10 (H) while performing services as an affiliate of
11 a person described by Paragraph (G), or as an employee or agent of a
12 person described by Paragraph (G), if the affiliate or employee or
13 agent performs those services as part of that person's normal
14 business activities; or

15 (I) as a result of a short sale transaction that
16 complies with Section 50.107 and in which a short sale addendum
17 form, as adopted by the Texas Real Estate Commission, is part of the
18 contract used to acquire the residence in foreclosure.

19 (3) "Foreclosure consultant" means a person who, in
20 the course of the person's business, vocation, or occupation,
21 solicits, represents, or offers to a homeowner to perform, for
22 compensation from the homeowner or from the proceeds of a loan or
23 advance of funds, a service that the person represents will:

24 (A) prevent or postpone a foreclosure sale;

25 (B) obtain a forbearance from:

26 (i) a mortgagee;

27 (ii) a beneficiary of a deed of trust; or

1 (iii) another person who holds a lien
2 secured by the residence in foreclosure;

3 (C) assist the homeowner:

4 (i) to cure the default giving rise to the
5 foreclosure action; or

6 (ii) to exercise the right of reinstatement
7 of the homeowner's obligation secured by the residence in
8 foreclosure;

9 (D) obtain an extension of the period within
10 which the homeowner may reinstate the homeowner's obligation
11 secured by the residence in foreclosure;

12 (E) obtain a waiver of an acceleration clause
13 contained in a promissory note or contract secured by a deed of
14 trust or mortgage on a residence in foreclosure or contained in the
15 deed of trust or mortgage;

16 (F) assist the homeowner to obtain a loan or
17 advance of funds to prevent foreclosure;

18 (G) avoid or ameliorate the impairment of the
19 homeowner's credit resulting from the recording of a notice of
20 default or the conduct of a foreclosure sale;

21 (H) save the homeowner's residence from
22 foreclosure; or

23 (I) assist the homeowner in obtaining excess
24 proceeds from a foreclosure sale of the homeowner's residence.

25 (4) "Foreclosure consulting contract" means a
26 contract between a foreclosure consultant and the homeowner of a
27 residence.

1 (5) "Homeowner" means a person who holds record title
2 to a residence and occupies the residence as the person's principal
3 residence.

4 (6) "Residence in foreclosure" means residential real
5 property consisting of not more than four single-family dwelling
6 units, at least one of which is occupied as the property owner's
7 principal place of residence, and against which a foreclosure
8 action has been commenced or as to which an equity purchaser has
9 actual or constructive knowledge that the loan is at least 30 days
10 delinquent or in default.

11 (7) "Short sale" means a transaction in which the
12 residence in foreclosure is sold when a holder of an obligation
13 secured by a lien of record agrees to release the lien for an amount
14 that is less than the outstanding amount due and owing under the
15 obligation.

16 (b) For purposes of Subsection (a)(6), a foreclosure action
17 has been commenced if:

18 (1) notice of sale has been filed under Section
19 51.002(b); or

20 (2) a judicial foreclosure action has been commenced.

21 Sec. 50.003. EXCEPTION FROM APPLICABILITY OF CHAPTER. (a)
22 Except as provided by Subsection (b), this chapter does not apply to
23 the following persons that perform foreclosure consulting
24 services:

25 (1) an attorney admitted to practice in this state who
26 performs those services in relation to the attorney's
27 attorney-client relationship with a homeowner or the beneficiary of

1 the lien being foreclosed;

2 (2) a person that holds or is owed an obligation
3 secured by a lien on a residence in foreclosure if the person
4 performs those services in connection with the obligation or lien;

5 (3) a mortgage servicer, as defined by Section
6 51.0001, of an obligation secured by a lien on a residence in
7 foreclosure if the servicer performs those services in connection
8 with the obligation or lien;

9 (4) a person that regulates banks, trust companies,
10 savings and loan associations, credit unions, or insurance
11 companies under the laws of this state or the United States if the
12 person performs those services as part of the person's normal
13 business activities;

14 (5) an affiliate of a person described by Subdivision
15 (4) or an employee or agent of a person described by Subdivision (4)
16 if the affiliate, employee, or agent performs those services as
17 part of that person's normal business activities;

18 (6) a judgment creditor of the homeowner of the
19 residence in foreclosure, if:

20 (A) the legal action giving rise to the judgment
21 was commenced before the notice of default required under Section
22 5.064, 5.066, or 51.002(d); and

23 (B) the judgment is recorded in the real property
24 records of the clerk of the county where the residence in
25 foreclosure is located;

26 (7) a licensed title insurer, title insurance agent,
27 or escrow officer authorized to transact business in this state if

1 the person is performing those services in conjunction with title
2 insurance or settlement services;

3 (8) a licensed real estate broker or real estate
4 salesperson if the person is engaging in an activity for which the
5 person is licensed;

6 (9) a mortgage broker or loan officer licensed under
7 Chapter 156, Finance Code, if the person is engaging in an activity
8 for which the person is licensed; or

9 (10) a nonprofit organization that provides solely
10 counseling or advice to homeowners who have a residence in
11 foreclosure or have defaulted on their home loans, unless the
12 organization is an associate of the foreclosure consultant.

13 (b) This chapter applies to a person described by Subsection
14 (a) if the person is providing foreclosure consulting services
15 designed or intended to transfer title, directly or indirectly, to
16 a residence in foreclosure to that person or that person's
17 associate.

18 Sec. 50.004. WAIVER OF CERTAIN RIGHTS VOID. A provision in
19 a foreclosure consulting contract or equity purchase contract is
20 void if the provision attempts or purports to:

21 (1) waive a right specified in this chapter or the
22 right to a jury trial;

23 (2) consent to jurisdiction for litigation or choice
24 of law in a state other than this state;

25 (3) consent to venue in a county other than the county
26 in which the residence is located; or

27 (4) impose a cost or fee greater than the actual cost

1 or fee.

2 Sec. 50.005. CONFLICT WITH OTHER LAW. To the extent of a
3 conflict between this chapter and Chapter 393, Finance Code, this
4 chapter controls.

5 [Sections 50.006-50.050 reserved for expansion]

6 SUBCHAPTER B. FORECLOSURE CONSULTANTS

7 Sec. 50.051. FORM AND TERMS OF CONTRACT. A contract for
8 services of a foreclosure consultant entered into by a homeowner of
9 a residence in foreclosure must:

10 (1) be printed in at least 12-point type;

11 (2) include the name of the foreclosure consultant and
12 the address to which a notice of cancellation may be mailed;

13 (3) include a full disclosure of:

14 (A) the nature of the consulting services to be
15 provided; and

16 (B) the total amount and terms of any
17 compensation to be received by the foreclosure consultant;

18 (4) be provided to each homeowner for review at least
19 24 hours before the homeowner signs the contract; and

20 (5) be dated, signed, and acknowledged by each
21 homeowner and the foreclosure consultant.

22 Sec. 50.052. REQUIRED DISCLOSURE. (a) Before entering
23 into a contract with a homeowner of a residence in foreclosure for
24 the purchase of the services of a foreclosure consultant, the
25 foreclosure consultant shall provide the homeowner written notice
26 stating the following, in at least 14-point boldfaced type:

27 NOTICE REQUIRED BY TEXAS LAW

1 _____ (name of foreclosure consultant) or an associate of
2 _____ (name of foreclosure consultant) cannot ask you to sign
3 or have you sign any document that transfers an interest in your
4 home or property to _____ (name of foreclosure consultant) or
5 _____ (name of foreclosure consultant's) associate.

6 _____ (name of foreclosure consultant) or _____ (name of
7 foreclosure consultant's) associate cannot guarantee you that they
8 will be able to refinance your home or arrange for you to keep your
9 home.

10 You may, at any time, cancel this contract without penalty of any
11 kind.

12 If you want to cancel this contract, mail a signed and dated copy of
13 this notice of cancellation, or another written notice indicating
14 your intent to cancel the foreclosure consulting contract, to
15 _____ (name and address of foreclosure consultant) at
16 _____ (address of foreclosure consultant,
17 including facsimile and e-mail address).

18 As part of the cancellation of the contract, you (the homeowner)
19 must not later than the 60th day after the date of this notice:

20 (1) repay any money spent on your behalf by
21 _____ (name of foreclosure consultant) before the
22 consultant receives this notice; and

23 (2) pay, as a result of this contract, interest on that
24 amount calculated at the prime rate published by the federal
25 reserve, plus two percent, with the total interest rate not to
26 exceed eight percent a year.

27 This is an important legal contract and could result in the loss of

1 your home. Contact an attorney or a housing counselor approved by
2 the federal department of housing and urban development before
3 signing.

4 (b) The contract must have attached two easily detachable
5 copies of a notice of cancellation. The notice must state the
6 following in at least 14-point type:

7 NOTICE OF CANCELLATION

8 _____ (date of contract)

9 To: _____ (name of foreclosure consultant)

10 _____ (address of foreclosure consultant, including
11 facsimile and e-mail)

12 I hereby cancel this contract.

13 _____ (date)

14 _____ (homeowner's signature)

15 (c) The foreclosure consultant shall provide to the
16 homeowner a signed, dated, and acknowledged copy of the foreclosure
17 consulting contract, with the notice of cancellation attached, on
18 execution of the contract.

19 Sec. 50.053. RIGHT OF CANCELLATION. (a) In addition to any
20 right of rescission available under state or federal law, the
21 homeowner has the right to cancel a foreclosure consulting contract
22 under this chapter at any time.

23 (b) Notice of cancellation of the foreclosure consulting
24 contract is effective on the date the homeowner sends the notice by
25 United States mail, properly addressed with postage prepaid, to the
26 foreclosure consultant at the address specified in the contract or
27 through any facsimile or e-mail address identified in the contract

1 or other materials provided to the homeowner by the foreclosure
2 consultant.

3 (c) Notice of cancellation may be in a form other than the
4 form provided in the contract and is effective, however expressed,
5 if the notice indicates the homeowner's intention to cancel the
6 foreclosure consulting contract.

7 (d) A homeowner who exercises the right to cancel a
8 foreclosure consulting contract shall, not later than the 60th day
9 after the date of the notice of cancellation:

10 (1) repay any money that the foreclosure consultant
11 paid or advanced in good faith before the consultant received the
12 notice of cancellation; and

13 (2) pay interest on that amount calculated at the
14 prime rate published by the federal reserve plus two percent, with
15 the total interest rate not to exceed eight percent a year, from the
16 date of the expenditure until the date repaid by the homeowner.

17 (e) The right to cancel may not be conditioned on the
18 repayment of any money.

19 Sec. 50.054. LANGUAGE. (a) A foreclosure consultant shall
20 provide the homeowner a copy of all documents required by this
21 chapter in typed or written form:

22 (1) in English; and

23 (2) on request of the homeowner, translated into
24 another language identified by the homeowner and certified by the
25 translator as a true and correct translation of the English
26 version.

27 (b) The translated, certified document has equal status and

1 credibility as the English version.

2 Sec. 50.055. PROHIBITED CONDUCT. A foreclosure consultant
3 may not:

4 (1) charge, collect, or receive interest or
5 compensation for a loan made by the foreclosure consultant to the
6 homeowner of a residence in foreclosure that exceeds eight percent
7 a year;

8 (2) take an assignment of wages to secure payment of
9 compensation;

10 (3) acquire an interest, directly or indirectly, in
11 the real or personal property of the homeowner of a residence in
12 foreclosure with whom the foreclosure consultant has contracted to
13 perform services; or

14 (4) take an action under a power of attorney from a
15 homeowner for any purpose other than to inspect documents related
16 to the foreclosure.

17 Sec. 50.056. RESTRICTIONS ON CHARGE OR RECEIPT OF
18 CONSIDERATION. A foreclosure consultant may not:

19 (1) charge, collect, or receive compensation until the
20 date that the foreclosure consultant has fully performed each
21 service that the foreclosure consultant has contracted to perform
22 or has represented that the foreclosure consultant can or will
23 perform; or

24 (2) receive any consideration from a third party in
25 connection with foreclosure consulting services provided to the
26 homeowner of a residence in foreclosure unless the consideration is
27 fully disclosed in writing to the homeowner.

1 [Sections 50.057-50.100 reserved for expansion]

2 SUBCHAPTER C. EQUITY PURCHASE CONTRACTS

3 Sec. 50.101. FORM AND TERMS OF CONTRACT. (a) Each equity
4 purchase contract must be printed in at least 12-point type, dated,
5 and signed by each selling owner of the residence in foreclosure and
6 the equity purchaser before the execution of an instrument
7 quit-claiming, assigning, transferring, conveying, or encumbering
8 an interest in the residence in foreclosure.

9 (b) In addition to the notice required by Section 50.103,
10 the contract must contain:

11 (1) the name, business address, and telephone number
12 of the equity purchaser;

13 (2) the street address and legal description of the
14 residence in foreclosure;

15 (3) a clear and conspicuous disclosure of any
16 financial or legal obligations of the homeowner that will be
17 assumed by the equity purchaser;

18 (4) the total consideration to be paid by the equity
19 purchaser in connection with or incident to the equity purchaser's
20 acquisition of the residence in foreclosure;

21 (5) the payment terms or the terms of other
22 consideration, including any services the equity purchaser
23 represents will be performed for the homeowner before or after the
24 sale;

25 (6) the date and time the possession of the residence
26 in foreclosure is to be transferred to the equity purchaser;

27 (7) the terms of any lease agreement;

1 (8) the specifications of any option or right to
2 repurchase the residence in foreclosure, including the specific
3 amount of any escrow deposit, down payment, purchase price, closing
4 cost, commission, or other fee or cost;

5 (9) a notice of cancellation as provided in Section
6 50.103; and

7 (10) the following notice printed in at least 14-point
8 boldfaced type immediately above the statement required by Section
9 50.103:

10 NOTICE REQUIRED BY TEXAS LAW

11 Until your right to cancel this contract has ended, _____
12 (name of equity purchaser) or anyone working for _____ (name
13 of equity purchaser) CANNOT ask you to sign or have you sign any
14 deed or any other document.

15 (c) If the equity purchaser will not be assuming any
16 financial or legal obligations of the homeowner, the equity
17 purchaser shall provide to the homeowner a separate written
18 disclosure, in at least 14-point boldfaced type, that contains
19 substantially the following language:

20 WARNING: PURCHASER, _____, WILL NOT ASSUME OR PAY ANY
21 PRESENT MORTGAGE, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES
22 AGAINST THE PROPERTY. THE SELLER, _____, UNDERSTANDS
23 THAT THE SELLER WILL REMAIN RESPONSIBLE FOR ALL PAYMENTS DUE ON ALL
24 MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES AND FOR
25 ANY DEFICIENCY JUDGMENT ENTERED AFTER THE FORECLOSURE SALE.

26 I HAVE HAD THIS ENTIRE WARNING READ OUT LOUD TO ME AND
27 UNDERSTAND THAT THE PURCHASER, _____, WILL NOT ASSUME ANY

1 PRESENT MORTGAGES, DEEDS OF TRUST, OR OTHER LIENS OR ENCUMBRANCES
2 AGAINST THE PROPERTY DESCRIBED AS _____.

3 DATE _____

4 SELLER'S SIGNATURE _____.

5 (d) The contract survives delivery of any instrument of
6 conveyance of the residence in foreclosure, but does not have any
7 effect on a person other than a party to the contract or affect
8 title to the residence in foreclosure.

9 Sec. 50.102. RIGHT OF CANCELLATION. (a) In addition to any
10 right of rescission available under state or federal law, the
11 homeowner has the right to cancel a contract with an equity
12 purchaser before midnight of the third business day following the
13 day on which the homeowner signs a contract that complies with this
14 subchapter or before noon on the day before the foreclosure sale of
15 the residence in foreclosure, whichever occurs first.

16 (b) Notice of cancellation of the equity purchase contract
17 is effective on the date the homeowner personally delivers the
18 notice to the address specified in the contract or sends the notice
19 by the United States mail, properly addressed, with postage
20 prepaid.

21 (c) Notice of cancellation may be in a form other than the
22 form provided in the contract and is effective, however expressed,
23 if the notice indicates the homeowner's intention to cancel the
24 contract.

25 (d) In the absence of any written notice of cancellation
26 from the homeowner, the homeowner's execution of a deed or other
27 instrument of conveyance of an interest in the residence in

1 foreclosure to the equity purchaser after the expiration of the
2 cancellation period creates a rebuttable presumption that the
3 homeowner did not cancel the contract with the equity purchaser.

4 Sec. 50.103. NOTICE OF CANCELLATION. (a) The contract must
5 conspicuously state in at least 12-point boldfaced type the
6 following as the last provision before the space reserved for the
7 selling homeowner's signature:

8 You may cancel this contract for the sale of your house without any
9 penalty or obligation at any time before _____ (date
10 and time). See the attached notice of cancellation form for an
11 explanation of this right.

12 (b) The contract must have attached two easily detachable
13 copies of a cancellation notice. The notice must state the
14 following in at least 14-point boldfaced type:

15 NOTICE OF CANCELLATION

16 _____ (date contract signed)

17 You may cancel this contract for the sale of your house, without any
18 penalty or obligation, at any time before
19 _____ (date and time). To cancel this
20 transaction, personally deliver a signed and dated copy of this
21 Notice of Cancellation by United States mail, postage prepaid, to
22 _____, (name of purchaser) at _____
23 (street address of purchaser's place of business) NOT LATER THAN
24 _____ (date and time). I hereby cancel this
25 transaction.

26 _____ (date)

27 _____ (seller's signature)

1 (c) The equity purchaser shall provide the homeowner with a
2 signed and dated copy of the contract, with the notice of
3 cancellation, as provided by Subsection (b), attached on execution
4 of the contract.

5 (d) Not later than the 10th day after the date the equity
6 purchaser receives a notice of cancellation as provided by Section
7 50.102 and this section, the equity purchaser shall unconditionally
8 return the original equity purchase contract and any other
9 documents signed by the homeowner.

10 Sec. 50.104. ACTIONS BEFORE CANCELLATION PERIOD EXPIRES.

11 An equity purchaser may not do any of the following before the
12 period within which the homeowner may cancel the transaction has
13 elapsed:

14 (1) accept from the homeowner an execution of, or
15 induce the homeowner to execute, an instrument of conveyance of an
16 interest in the residence in foreclosure;

17 (2) record any document, including the contract or any
18 lease, lien, or instrument of conveyance, that is signed by the
19 homeowner;

20 (3) transfer or encumber or purport to transfer or
21 encumber an interest in the residence in foreclosure to a third
22 party; or

23 (4) pay any consideration to the homeowner.

24 Sec. 50.105. LANGUAGE. (a) Except as provided by
25 Subsection (b), an equity purchaser shall provide to a homeowner a
26 contract, rental agreement, lease, option or right to repurchase,
27 or notice, conveyance, lien, encumbrance, consent, or other

1 document or instrument signed by the homeowner printed in English.

2 (b) If the equity purchaser has actual or constructive
3 knowledge that the homeowner's principal language is a language
4 other than English, the equity purchaser shall provide the
5 homeowner with a notice, printed in the homeowner's principal
6 language, substantially similar to the following:

7 This transaction involves important and complex legal
8 consequences, including your right to cancel this transaction
9 within three business days following the date you sign this
10 contract. You should consult with an attorney or seek assistance
11 from a housing counselor by calling the Texas foreclosure hotline
12 at _____ (current, correct telephone number).

13 (c) If a notice in the homeowner's principal language is
14 required to be provided under Subsection (b), the equity purchaser
15 shall provide the notice to the homeowner as a separate document
16 accompanying the contract required by Section 50.101.

17 Sec. 50.106. OPTIONS THROUGH RECONVEYANCES. (a) A
18 reconveyance contract in which a homeowner purports to grant a
19 residence in foreclosure to an equity purchaser by an instrument
20 that appears to be an absolute conveyance and reserves to the
21 homeowner or in which the equity purchaser grants the homeowner an
22 option to repurchase is permitted only if all of the following
23 conditions are met:

24 (1) the reconveyance contract complies with Section
25 50.101;

26 (2) the reconveyance contract provides the homeowner
27 with a nonwaivable 30-day right to cure any default under the

1 reconveyance contract and specifies that the homeowner may exercise
2 this right on not less than three separate occasions during the term
3 of the reconveyance contract;

4 (3) the equity purchaser fully assumes or discharges
5 the lien in foreclosure and any prior liens that the foreclosure did
6 not extinguish without violation of the terms and conditions of the
7 liens being assumed or discharged;

8 (4) the equity purchaser verifies and demonstrates
9 that the homeowner has or will have a reasonable ability to make
10 lease payments for the residence in foreclosure and to repurchase
11 the residence in foreclosure not later than the expiration of the
12 term of the option to repurchase under the reconveyance contract;
13 and

14 (5) the price the homeowner must pay to exercise the
15 option to repurchase the residence in foreclosure is not
16 unconscionable.

17 (b) For purposes of Subsection (d), there is a rebuttable
18 presumption that the homeowner has a reasonable ability to make
19 lease payments and to repurchase the residence in foreclosure if
20 the homeowner's payments for primary housing expenses and regular
21 principal and interest payments on other personal debt do not
22 exceed 60 percent of the homeowner's monthly gross income.

23 (c) The acquisition price paid by the equity purchaser may
24 include any actual costs incurred by the equity purchaser in
25 acquiring the residence in foreclosure.

26 (d) For purposes of Subsection (a)(5), there is a rebuttable
27 presumption that a reconveyance contract in which the repurchase

1 price is greater than 25 percent of the price at which the equity
2 purchaser acquired the residence in foreclosure is unconscionable.

3 Sec. 50.107. SHORT SALES. (a) In this section, "subsequent
4 purchaser" means a person who:

5 (1) enters into a contract with an equity purchaser
6 before the closing of a short sale transaction to acquire the
7 residence in foreclosure; and

8 (2) acquires the residence in foreclosure not later
9 than the 14th day after the date of the closing of the short sale
10 transaction.

11 (b) With respect to a short sale transaction in which an
12 equity purchaser intends to resell the residence in foreclosure to
13 a subsequent purchaser, the equity purchaser shall:

14 (1) not later than the date of closing of the short
15 sale, provide full disclosure to the homeowner and to the holder of
16 the lien or encumbrance on the residence in foreclosure, or the
17 holder's representative, of the terms of the agreement between the
18 equity purchaser and a subsequent purchaser, including the purchase
19 price to be paid by the subsequent purchaser;

20 (2) fully disclose to the subsequent purchaser and to
21 the subsequent purchaser's lender, or the lender's representative,
22 not later than the effective date of the contract between the
23 subsequent purchaser and the equity purchaser, the terms of the
24 agreement between the equity purchaser and the homeowner, including
25 the purchase price paid by the equity purchaser for the residence in
26 foreclosure;

27 (3) comply with all applicable rules adopted by the

1 Texas Real Estate Commission with regard to short sales; and
2 (4) comply with Section 2501.006, Insurance Code.
3 [Sections 50.108-50.150 reserved for expansion]

4 SUBCHAPTER D. ENFORCEMENT

5 Sec. 50.151. CRIMINAL PENALTY. (a) A person commits an
6 offense if the person violates this chapter.

7 (b) An offense under this chapter is a Class A misdemeanor.

8 Sec. 50.152. DECEPTIVE TRADE PRACTICE. A violation of this
9 chapter is a false, misleading, or deceptive act or practice
10 actionable under Subchapter E, Chapter 17, Business & Commerce
11 Code.

12 SECTION 2. Section 17.46(b), Business & Commerce Code, is
13 amended to read as follows:

14 (b) Except as provided in Subsection (d) [~~of this section~~],
15 the term "false, misleading, or deceptive acts or practices"
16 includes, but is not limited to, the following acts:

17 (1) passing off goods or services as those of another;

18 (2) causing confusion or misunderstanding as to the
19 source, sponsorship, approval, or certification of goods or
20 services;

21 (3) causing confusion or misunderstanding as to
22 affiliation, connection, or association with, or certification by,
23 another;

24 (4) using deceptive representations or designations
25 of geographic origin in connection with goods or services;

26 (5) representing that goods or services have
27 sponsorship, approval, characteristics, ingredients, uses,

1 benefits, or quantities which they do not have or that a person has
2 a sponsorship, approval, status, affiliation, or connection which
3 he does not;

4 (6) representing that goods are original or new if
5 they are deteriorated, reconditioned, reclaimed, used, or
6 secondhand;

7 (7) representing that goods or services are of a
8 particular standard, quality, or grade, or that goods are of a
9 particular style or model, if they are of another;

10 (8) disparaging the goods, services, or business of
11 another by false or misleading representation of facts;

12 (9) advertising goods or services with intent not to
13 sell them as advertised;

14 (10) advertising goods or services with intent not to
15 supply a reasonable expectable public demand, unless the
16 advertisements disclosed a limitation of quantity;

17 (11) making false or misleading statements of fact
18 concerning the reasons for, existence of, or amount of price
19 reductions;

20 (12) representing that an agreement confers or
21 involves rights, remedies, or obligations which it does not have or
22 involve, or which are prohibited by law;

23 (13) knowingly making false or misleading statements
24 of fact concerning the need for parts, replacement, or repair
25 service;

26 (14) misrepresenting the authority of a salesman,
27 representative or agent to negotiate the final terms of a consumer

1 transaction;

2 (15) basing a charge for the repair of any item in
3 whole or in part on a guaranty or warranty instead of on the value of
4 the actual repairs made or work to be performed on the item without
5 stating separately the charges for the work and the charge for the
6 warranty or guaranty, if any;

7 (16) disconnecting, turning back, or resetting the
8 odometer of any motor vehicle so as to reduce the number of miles
9 indicated on the odometer gauge;

10 (17) advertising of any sale by fraudulently
11 representing that a person is going out of business;

12 (18) advertising, selling, or distributing a card
13 which purports to be a prescription drug identification card issued
14 under Section 4151.152, Insurance Code, in accordance with rules
15 adopted by the commissioner of insurance, which offers a discount
16 on the purchase of health care goods or services from a third party
17 provider, and which is not evidence of insurance coverage, unless:

18 (A) the discount is authorized under an agreement
19 between the seller of the card and the provider of those goods and
20 services or the discount or card is offered to members of the
21 seller;

22 (B) the seller does not represent that the card
23 provides insurance coverage of any kind; and

24 (C) the discount is not false, misleading, or
25 deceptive;

26 (19) using or employing a chain referral sales plan in
27 connection with the sale or offer to sell of goods, merchandise, or

1 anything of value, which uses the sales technique, plan,
2 arrangement, or agreement in which the buyer or prospective buyer
3 is offered the opportunity to purchase merchandise or goods and in
4 connection with the purchase receives the seller's promise or
5 representation that the buyer shall have the right to receive
6 compensation or consideration in any form for furnishing to the
7 seller the names of other prospective buyers if receipt of the
8 compensation or consideration is contingent upon the occurrence of
9 an event subsequent to the time the buyer purchases the merchandise
10 or goods;

11 (20) representing that a guarantee or warranty confers
12 or involves rights or remedies which it does not have or involve,
13 provided, however, that nothing in this subchapter shall be
14 construed to expand the implied warranty of merchantability as
15 defined in Sections 2.314 through 2.318 and Sections 2A.212 through
16 2A.216 to involve obligations in excess of those which are
17 appropriate to the goods;

18 (21) promoting a pyramid promotional scheme, as
19 defined by Section 17.461;

20 (22) representing that work or services have been
21 performed on, or parts replaced in, goods when the work or services
22 were not performed or the parts replaced;

23 (23) filing suit founded upon a written contractual
24 obligation of and signed by the defendant to pay money arising out
25 of or based on a consumer transaction for goods, services, loans, or
26 extensions of credit intended primarily for personal, family,
27 household, or agricultural use in any county other than in the

1 county in which the defendant resides at the time of the
2 commencement of the action or in the county in which the defendant
3 in fact signed the contract; provided, however, that a violation of
4 this subsection shall not occur where it is shown by the person
5 filing such suit he neither knew or had reason to know that the
6 county in which such suit was filed was neither the county in which
7 the defendant resides at the commencement of the suit nor the county
8 in which the defendant in fact signed the contract;

9 (24) failing to disclose information concerning goods
10 or services which was known at the time of the transaction if such
11 failure to disclose such information was intended to induce the
12 consumer into a transaction into which the consumer would not have
13 entered had the information been disclosed;

14 (25) using the term "corporation," "incorporated," or
15 an abbreviation of either of those terms in the name of a business
16 entity that is not incorporated under the laws of this state or
17 another jurisdiction;

18 (26) selling, offering to sell, or illegally promoting
19 an annuity contract under Chapter 22 (S.B. 17), Acts of the 57th
20 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's
21 Texas Civil Statutes), with the intent that the annuity contract
22 will be the subject of a salary reduction agreement, as defined by
23 that Act, if the annuity contract is not an eligible qualified
24 investment under that Act or is not registered with the Teacher
25 Retirement System of Texas as required by Section 8A of that Act;
26 [~~or~~]

27 (27) taking advantage of a disaster declared by the

1 governor under Chapter 418, Government Code, by:

2 (A) selling or leasing fuel, food, medicine, or
3 another necessity at an exorbitant or excessive price; or

4 (B) demanding an exorbitant or excessive price in
5 connection with the sale or lease of fuel, food, medicine, or
6 another necessity;

7 (28) making false or misleading statements of fact in
8 inducing or attempting to induce a homeowner to enter into a
9 foreclosure consulting contract that does not comply with Chapter
10 50, Property Code; or

11 (29) making false or misleading statements of material
12 fact concerning the sale of a residence in foreclosure to the equity
13 purchaser under Chapter 50, Property Code, including a statement
14 regarding:

15 (A) the value of a residence in foreclosure;

16 (B) the amount of proceeds a homeowner will
17 receive after a foreclosure sale;

18 (C) a contract term;

19 (D) a homeowner's rights or obligations incident
20 to or arising out of a sale transaction; or

21 (E) the nature of a document that an equity
22 purchaser induces a homeowner to sign.

23 SECTION 3. The changes in law made by this Act apply to a
24 foreclosure consulting or equity purchase contract entered into on
25 or after the effective date of this Act. A foreclosure consulting
26 or equity purchase contract entered into before the effective date
27 of this Act is governed by the law in effect on the date the contract

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1 was entered into, and the former law is continued in effect for that
2 purpose.

3 SECTION 4. This Act takes effect September 1, 2011.